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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,822	12/10/2003	David Jeffrey Chodosh	51483/RVW/C987	2156
23363	7590	09/21/2005		
CHRISTIE, PARKER & HALE, LLP PO BOX 7068 PASADENA, CA 91109-7068			EXAMINER KUHN, SARAH LOUISE	
			ART UNIT 1761	PAPER NUMBER
DATE MAILED: 09/21/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/733,822

Applicant(s)

CHODOSH, DAVID JEFFREY

Examiner

Sarah L. Kuhns

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 8-14, 16-21, and 23-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Lulom et al., U.S. Patent 6,776,315.

In regard to claim 1, Lulom discloses a beverage container attachment comprising a cup portion comprising an inner surface that forms a reservoir (30) for receiving a food substance and a connector (20) having an opening (24) wherein the connector is for attaching the cup portion to a beverage container; and a beverage regulator (52) attached to a wall that defines the connector opening (24) to allow a beverage to enter the reservoir (30) through the connector opening (24) while preventing the beverage from exiting through the connector opening (column 4, lines 64-67).

In regard to claim 2, the beverage regulator of Lulom qualifies as a channel for conveying fluids making it a conduit.

In regard to claims 8 and 9, Lulom discloses the food substance being ice cream (abstract).

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In regard to claim 10, Laulom discloses the connector (20) containing threads for forming a removable threaded connection with the beverage container (column 2, lines 61-62).

In regard to claim 11, Laulom discloses the beverage container attachment comprising a lid portion (34) removably attached to the cup portion (30).

In regard to claims 12 and 13, Laulom discloses the lid portion (34) comprising a spout (40) having a drinking opening.

In regard to claim 14, Laulom discloses a beverage container attachment comprising a cup portion for receiving a food substance (abstract) and a connector (20) having an opening (24), wherein the connector (20) is for attaching the cup portion (30) to a beverage container (see figure 1); and a conduit (52) disposed within the reservoir and attached to a wall that defines the connector opening (24) to allow a beverage to enter the reservoir through the connector opening while preventing a beverage from exiting through the connector opening, wherein the conduit comprises a lower end with an opening that is in fluid communication with the connector opening to receive the beverage from the beverage container and wherein the lower end of the conduit form a fluid tight seal with the wall that defines the connector opening (column 4, lines 64-67).

In regard to claim 16, Laulom discloses the food substance being ice cream (abstract).

In regard to claim 17, Laulom discloses the connector (20) containing threads for forming a removable threaded connection with the beverage container (column 2, lines 61-62).

In regard to claim 18, Laulom discloses the beverage container attachment comprising a lid portion (34) removably attached to the cup portion (30).

In regard to claims 19 and 20, Laulom discloses the lid portion (34) comprising a spout (40) having a drinking opening.

In regard to claim 21, Laulom discloses a beverage assembly comprising a beverage container (see figure 1) having a beverage disposed therein and having an opening (24) through which the beverage may pass; a beverage container attachment comprising a cup portion (30) comprising an inner surface that forms a reservoir for receiving a food substance (abstract) and a connector (20) having an opening (24) in fluid communication with the beverage container opening, wherein the connector removably attaches the cup portion (30) to the beverage container (see figure 1); and a conduit disposed within the reservoir and comprising a lower end having an opening and upper end having an opening wherein the lower end of the conduit forms a fluid tight seal with the wall that defines the connector opening, and wherein the lower end opening of the conduit is in fluid communication with the connector opening and the beverage container opening to allow the beverage from the beverage container to enter the connector opening, traverse the lower end opening of the conduit to enter the reservoir, while the fluid tight seal prevents the beverage from exiting the reservoir through the connector opening (see figures 2-4 and column 4, lines 64-67).

In regard to claim 23, Laulom discloses the food substance being ice cream (abstract).

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In regard to claim 24, Laulom discloses the beverage being a soft drink beverage (column 1, lines 11-15).

In regard to claim 25, Laulom discloses the beverage container attachment comprising a lid portion (34) removably attached to the cup portion (30).

In regard to claims 26 and 27, Laulom discloses the lid portion (34) comprising a spout (40) having a drinking opening.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3-7, 15, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laulom, as applied above. The conduit disclosed by Laulom does not spiral up within the reservoir so that the upper opening is disposed at a substantially horizontal orientation. However, the claimed conduit would have been an obvious

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alternative to the conduit employed by Laulom because it serves the same purpose of preventing ice cream drippings from entering the beverage bottle.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hamlin, U.S. patent 5,312,014, Paulin, U.S. Patent 5,085,330, Bliss, U.S. patent 6,209,737, G.M. Chambers, U.S. Patent 2,975,925, and Killips, U.S. 2004/0253351 A1 all disclose beverage container attachments for making float-like beverage. E.B. Gamblin, Jr., U.S. Patent 3,438,527 discloses a drinking straw with a one-way flow valve.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-1088. The examiner can normally be reached on Monday - Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached at 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLK


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